Acosta & Ramírez Law Office, LLC | Newsletter: Act 60 Signed By The Governor of Puerto Rico

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Act 60 Signed By The Governor Of Puerto Rico

On July 1, 2019 the then Governor of Puerto Rico signed Act 60-2019 enacting the Puerto Rico Incentives Code (the "Act 60") incorporating most of Puerto Rico incentives legislation within a single statute. However, within the provisions of Act 60 several important amendments to the Puerto Rico Internal Revenue Code of 2011, as amended (the "PR IRC") were introduced. Following we will summarize these amendments to the PR IRC.

Elimination of Corporate NOL Carryover Limitations Upon Change in Control

The PR IRC had incorporated the Section 382 limitation of the US IRC which restrict the amount of the net operating loss carryover that may be used to offset the net income of a corporation for any taxable year after a change in ownership to an amount equal to the value of the corporation prior to change in ownership multiplied by the long-term tax-exempt rate.
Act 60 repealed this limitation effective for taxable years beginning after December 31, 2018.

Use of Cash Basis Method

Effective for taxable years beginning after December 31, 2018, Act 60 amended the PR IRC to allow taxpayers the use of the cash basis method if the person does not have inventory and has an average gross income of $3,000,000 or less for the prior three taxable years. Prior to this amendment the threshold was $1,000,000.

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Installment Sales

No gain or loss will be recognized on the cancellation of any installment note among related entities as a result of a reorganization among such entities. The unrecognized gain or loss will reduce the basis of the property and will be recognized upon the disposition of the property or change in control of the owner of the property.

Withholding Tax Exemption on Services among related Entities

Act 60 exempts from the 10% withholding tax payments for services rendered payments made to another entity engaged in a Puerto Rico trade or business or the production of income in Puerto Rico that is a member of the same controlled group or corporations or related entities.

Informative Returns

The PR IRC specifically provides that the failure to issue an informative statement required therein will preclude the taxpayer from taking an income tax deduction for the unreported payments. A special rule was provided for accrual basis or fiscal year taxpayers whereby they will be able to deduct the amounts not reported as a result of the use of the accrual method or fiscal year to the extent they include with the income tax return a reconciliation statement of the amounts claimed as a deduction and the amounts included in the informative statements for the taxable year.

Act 60 exempts from this reconciliation statement requirement entities filing audited financial statements and supplementary schedules along with their income tax return.

Withholding Tax on Distributive Share on Certain Passthrough Entities

For taxable years commencing after December 31, 2018 the PR IRC as amended by Act 60 partnerships and corporations of individuals will not be required to withhold the estimated tax on the distributive share of the net income when the shareholder or partner has losses or credits that satisfy the income tax that may be generated on the distributive share in the partnership or corporation of individuals and provides a sworn statement to the entity that he/she has made a good faith estimate to these effects.

Act 60 also provides that the withholding tax on a foreign partner distributive share in the partnership net income may be 30% plus 10% of the branch profits tax to the extent that the partner so elects.

New Separate Informative Return for Certain Payments Received

A new separate informative return will be required to report the payments received after December 31, 2018 by any entity engaged in the telecommunication business, internet access services, or that receives payments for advertising or insurance premiums from any residential or commercial clients. This provision does not set any minimum reporting amount. A $500 penalty per return will be imposed for noncompliance with this provision.

Pass-Through Entities May Avail of Services Special Tax

The PR IRC provides a special tax rate on gross income for Individuals and corporations whose source of income is substantially derived from services rendered.
Act 60 extended this special tax rate to partnerships, corporations of individuals and special partnerships. The special tax for the pass-through entities carrying out this election will be imposed to the electing entity in lieu of the income tax otherwise imposed to its shareholders or partners

Conversion of Corporations of Individuals and Special Partnerships

Pursuant to the Department of the Treasury Administrative Determination 12-04, if a corporation of individuals or special partnership wished to convert into a partnership, it has to request the Treasury's approval of the conversion by filing a request for an administrative ruling on or before the last day of the third month following its date of conversion.

Act 60 will allow corporations of individuals and special partnerships to carry out such conversion to a partnership by filing an election to these effects along with the informative return for the taxable year of the conversion. However, for reorganization transactions among a partnership and a corporation of individuals or a partnership and a special partnership a ruling should be requested.

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